

*Please return to:*

*Executive Assistant  
Kennewick Irrigation District  
2015 S Ely Street  
Kennewick, WA 99337*

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## **KENNEWICK IRRIGATION DISTRICT RESOLUTION 2017-49**

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### **Approving Irving Square Voluntary Mitigation Agreement**

A **RESOLUTION** of the Board of Directors of Kennewick Irrigation District (KID), Benton County, Washington, for the purpose of approving a development agreement with Jaya Holdings, LLC, a Washington Corporation (hereinafter “Developer”),

**WHEREAS**, the Board of Directors of KID (the Board) met in regular session on December 18, 2017, with a quorum present, and

**WHEREAS**, the Property is proposed for subdivision into a development known as “Irving Square” consisting 3.59 acres, of which 3.59 acres are classified as irrigable, which are proposed to be subdivided into 22 lots and legally described as follows;

**104892013521002**

SECTION 4, TOWNSHIP 8 NORTH, RANGE 29 EAST, QUARTER NW: SHORT PLAT #3521, LOT 2. RECORDED IN VOLUME 1 OF SHORT PLATS AT PAGE 3521, RECORDS OF BENTON COUNTY, WASHINGTON. (AF#2017-007400, 03/21/2017)

hereinafter referred to as the “Property.”

**WHEREAS**, the Property is being developed into a residential subdivision within the City of Kennewick boundaries; and

**WHEREAS**, the Property is owned by the Developer and has an allotment of irrigation water from KID; and

**WHEREAS**, RCW 58.17.310 requires that irrigation water rights-of-way be provided for each parcel of land, and also requires that, if the subdivision lies within land within an irrigation district classified as irrigable, completed irrigation water distribution facilities for such land may be required by the irrigation district by resolution as a condition for approval of the short plat or final plat by the legislative authority of the city, town, or county; and

**WHEREAS**, KID Resolution 86-15A requires completed irrigation facilities as a condition for approval of the short plat or final plat; and

**WHEREAS**, KID Policy 4.19 “Standard Specifications” specifies what comprises completed

irrigation facilities; and

**WHEREAS**, the Developer has made irrigation improvements on the Property, but has not completed the construction of a pump station, storage and appurtenant facilities to provide pressurized irrigation water to the subdivision as a completed irrigation facility; and

**WHEREAS**, the Developer and KID mutually agree that it is in each of their best interest for the Developer to contribute funds towards KID's planned regional system in lieu of constructing a pump station, storage and appurtenant facilities to service the Subdivision; and

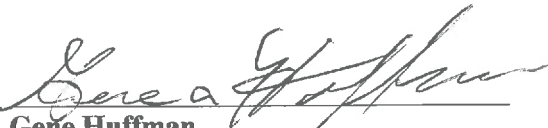
**WHEREAS**, the Developer desires to contribute funds equal to KID, which is \$6,974.33 toward the planned regional system in lieu of constructing a pump station, storage and appurtenant facilities at Developer's expense to service the Subdivision; and


**WHEREAS**, the KID cannot approve of any Final Plat phases of the Property unless completed irrigation systems are installed or bonded for, or the KID Board of Directors approves by resolution an acceptable security that creates a lien against the Property; and

**WHEREAS**, the parties desire to set forth their agreements on how said Voluntary Mitigation Agreement will be constructed, operated, maintained, replaced, and bettered for their mutual benefit and for the benefit of their heirs, assigns and successors;

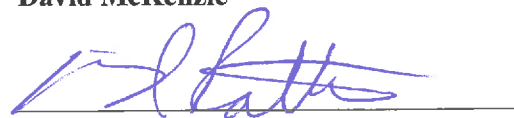
**NOW, THEREFORE, BE IT RESOLVED** that the attached "Irving Square Voluntary Mitigation Agreement" is approved.

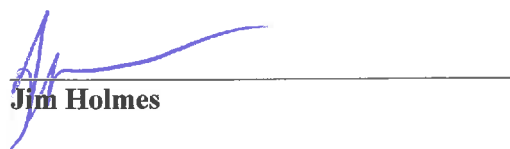
**RESOLUTION 2017-49 IS HEREBY ADOPTED** by the Board of Directors of Kennewick Irrigation District, Benton County, Washington, at a regular open public meeting thereof this 18<sup>th</sup> day of December, 2017.

  
Gene Huffman

  
David McKenzie

  
Dean Dennis

  
Kirk Rathbun

  
Jim Holmes

**IRVING SQUARE  
VOLUNTARY MITIGATION DEVELOPMENT  
AGREEMENT**

THIS AGREEMENT, made and entered into and effective this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between the parties hereto, who are identified as follows:

**Jaya Holdings, LLC** a Washington Corporation (hereinafter “Developer”),

and

**Kennewick Irrigation District**, an irrigation district formed and operated pursuant to RCW Ch. 87.03, referred to herein as “KID,”

Relating to that property in the City of Kennewick (“COK”) boundaries, County of Benton, and State of Washington, this is legally described as follows:

**104892013521002**

SECTION 4, TOWNSHIP 8 NORTH, RANGE 29 EAST, QUARTER NW: SHORT PLAT #3521, LOT 2. RECORDED IN VOLUME 1 OF SHORT PLATS AT PAGE 3521, RECORDS OF BENTON COUNTY, WASHINGTON. (AF#2017-007400, 03/21/2017)

hereinafter referred to as the “Property.”

WHEREAS, the Property is being developed into a residential subdivision within the COK boundaries; and

WHEREAS, the Property is being subdivided by the Developer and has an allotment of irrigation water from KID; and

WHEREAS, the Property is proposed for subdivision into a development known as “Irving Square” consisting 3.59 acres, of which approximately 3.59 acres is classified as irrigable, which are proposed to be subdivided into 22 lots; and

WHEREAS, RCW 58.17.310 requires that irrigation water rights-of-way be provided for each parcel of land, and also requires that, if the subdivision lies within land within an irrigation district classified as irrigable, completed irrigation water distribution facilities for such land may be required by the irrigation district by resolution as a condition for approval of the short plat or final plat by the legislative authority of the city, town, or county; and

WHEREAS, KID Resolution 86-15A requires completed irrigation facilities as a condition for approval of the short plat or final plat; and

WHEREAS, KID Policy 4.19 “Standard Specifications” specifies what comprises completed irrigation facilities; and

WHEREAS, the Developer has made irrigation improvements on the Property, but has not completed the construction of a pump station, storage and appurtenant facilities to provide pressurized irrigation water to the subdivision as a completed irrigation facility; and

WHEREAS, the Developer and KID mutually agree that it is in each of their best interest for the Developer to contribute funds towards KID's planned regional system in lieu of constructing a pump station, storage and appurtenant facilities to service the Subdivision; and

WHEREAS, the Developer desires to contribute funds equal to what would be the mutually agreed cost of constructing completed irrigation facilities, which is \$6,974.33 toward the planned regional system in lieu of constructing a pump station, storage and appurtenant facilities at Developer's expense to service the Subdivision; and

WHEREAS, the KID cannot approve of any Final Plat phases of the Property unless completed irrigation systems are installed or bonded for, or the KID Board of Directors approves by resolution an acceptable security that creates a lien against the Property; and

WHEREAS, the parties desire to set forth their agreements on how said Voluntary Mitigation Development Agreement will be constructed, operated, maintained, replaced, and bettered for their mutual benefit and for the benefit of their heirs, assigns and successors; NOW THEREFORE:

1. The Developer's Obligations. Developer:

- a. Shall pay to the KID a total sum of \$6,974.33 ("Total Sum") based on a surcharge per lot fee of \$317.01 within 30 days from the date of the agreement, an amount mutually agreed upon by KID and Developer, in lieu of the costs to presently install the completed irrigation facilities for the Subdivision. As an alternative, the Developer may elect to pay the surcharge upon completion of any of the following:
  - i. Transfer of parcel ownership
  - ii. Building permit application
  - iii. Utilization of the irrigation service
- b. Developer agrees that failure to pay the surcharge upon completion of any of the requirements constitutes grounds for KID to lien the property.
- c. Agrees to install and dedicate to KID an approved irrigation distribution pipeline and plan for off-site distribution piping in order to provide pressurized irrigation water to the Subdivision. The off-site distribution piping point of connection is near W. 4<sup>th</sup> Avenue and S. Jefferson Street. The pipeline will be installed with the S. Jefferson Street ROW and through an existing easement along the property at 12 N. Jefferson Street in order to reach the Property.
- d. Agrees to pay applicable review and inspection fees for future phases of the Subdivision.
- e. Agrees to hold harmless and indemnify KID and its officers, agents, consultants, contractors, representatives, attorneys, insurers and employees from any all claims judgments, damages, penalties, fines,

costs, liabilities or losses arising from or related to any design specifications herein or approval given hereunder. This hold harmless and indemnification provision applies to claims of negligence and any other theory of liability related to or arising out of this Agreement or otherwise raised against KID that involve the Subdivision that is the subject of this agreement.

2. KID Obligations. KID shall:
  - a. Provide a proportionate share of available irrigation water to the subdivision starting in April 2018, per the normal operating rules, regulations, and practices of KID.
  - b. Allow the Developer to connect to its existing PSA 154 pressurized system and to provide pressurized water to the project and shall make improvements to the system as needed to provide continued pressurized irrigation water.
  - c. Approve of the remaining phases of the project, subject to KID normal development review practices.
3. Water Rights Unaffected; Pump Ownership Remains. This Agreement does not create, grant, transfer, modify or affect any water rights of the Developer or KID.
4. Other Rights and Obligations Not Affected. No rights or obligations of the parties or to which the Property is subject are modified or affected hereby. Without limiting the generality of the foregoing, the Property, and all lots subsequently created from the Property, shall continue to be assessed in accordance with KID assessment rate structure and practices as they now exist and as they may be amended in the future.
5. Entire Agreement; Severability; Modification; Waiver: This agreement contains the entire agreement of the parties and supersedes and replaces any and all prior or contemporaneous agreements or understandings, written or oral, express or implied, between the parties concerning the subject matter of this agreement. Should any term or provision of this Agreement, or any part thereof, be held unenforceable for any reason, such unenforceable term or provision, or part thereof, shall not affect the remainder of this contract, it being agreed the provisions hereof are severable. This Agreement shall not be subject to modification except by written agreement signed by both parties. Failure of either party to enforce any of the provisions of this agreement shall not be construed as a waiver by that party of any such provisions or of the right of such party to thereafter strictly enforce each and every provision of this agreement.
6. Injunctive Relief. The Developer agrees and stipulates that irreparable injury will result to KID if Developer fails to fully perform all of their obligations, and agree that if Developer breaches this agreement or fails to fully perform an obligation herunder, KID shall be entitled to an injunction to restrain further breach and/or to force performance. Said injunctive relief shall be in addition to any other remedies KID may have.

7. Personal Warranty of Representative Authority. Each person signing this Agreement in a representative capacity individually and personally promises, covenants, represents and warrants that he or she has full authority to bind his or her principle to the terms of the Agreement, and hereby promises to hold the other parties hereto harmless from any claim or allegation that said person lacked such authority.
8. Attorney's Fees: In case litigation or arbitration is instituted arising directly or indirectly out of this Agreement, the substantially prevailing party or parties shall be awarded its reasonable attorney's fees, costs (including witness fees, expert witness fees and court reporter fees), at trial and on any appeal plus estimated interest accumulation on attorney fees and costs. In addition, in the event of arbitration, the substantially prevailing party shall be awarded its share of the arbitrator's fee.
9. Disputes, Default, Breach, Mediation and Arbitration. In the event any party alleges any failure to agree, default or breach against the other arising out of this Agreement and they are unable to resolve the same by direct negotiation within seven (7) days of written notification of same, then the following mediation and arbitration provisions shall apply. In the event of any such claims or disputes over this Agreement, and as a condition precedent to the commencing of any legal action on said Agreement, the parties agree that they will first submit said dispute to mediation and arbitration in Kennewick, Washington. Upon demand for mediation by either party, a single mediator shall be selected by agreement of the parties or, if the parties are unable to agree, by the presiding judge of Benton County Superior Court. Within ten (10) days of demand for mediation by a party, a mediator shall be selected by the parties. If the parties cannot agree on a mediator, either party may submit a request to the Benton County Superior Court presiding judge to appoint a mediator in compliance with this Agreement. The mediation shall held within forty-five (45) days of selection of the mediator. If mediation is not successful, the mediator shall thereafter become an arbitrator and shall make a decision on the dispute within ten (10) days of the mediation. The mandatory arbitration rules of the Benton/Franklin County Superior Courts shall be binding as to procedure, except as to the unique right of appeal which is not applicable. The limited right of appeal under the general arbitration laws of the State of Washington shall apply.
10. Jurisdiction and Venue: Any litigation arising under, related to, or in connection with this Agreement shall occur solely in the state court of appropriate subject matter jurisdiction for Benton County, State of Washington, and in no other court.
11. Term of the agreement: This agreement shall expire in five (5) years, though the obligations of Developer to pay any remaining amount due, plus interest, which shall continue to accrue shall survive the expiration of this agreement.
12. Agreement is binding. The terms of this Agreement are intended to be and shall constitute a binding agreement and a covenant running with the land. The benefits and obligations herein shall benefit and bind the parties and their

successors and assigns in interest unless otherwise terminated by the parties hereto.

13. Recording. This Agreement and any amendments thereto shall be filed for recording with the Benton County Auditor.

14. Scrutiny. This Agreement has been submitted to the scrutiny of all parties and their respective legal counsel and shall be given a fair and reasonable interpretation in accordance with the words hereof without consideration or weight being given to its being drafted by or for one of the parties. If in fact one of the parties has not submitted this Agreement to the scrutiny of their legal counsel, such party stipulates that, despite having had the opportunity to do so, they waived the same and elected to proceed without the benefit of such legal review.

**IN WITNESS WHEREOF**, the parties execute this Agreement as follows.

**DEVELOPER:**

Jaya Holdings, LLC

BY \_\_\_\_\_  
Mallikarjuna Vallem

Date Signed: \_\_\_\_\_, 2017

STATE OF WASHINGTON )

: ss

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2017, before me personally appeared **Mallikarjuna Vallem**, to me known to be the president of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he or she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my official seal this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
NOTARY PUBLIC,  
State of Washington  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

**KENNEWICK IRRIGATION DISTRICT:**

By: \_\_\_\_\_  
Charles Freeman, its Secretary Manager

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_  
Gene Huffman, President of the Board of Directors

Date: \_\_\_\_\_, 2017

As approved by Resolution of the Board of Directors in a regularly scheduled Board meeting on \_\_\_\_\_, 2017

STATE OF WASHINGTON )

: ss

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2017, before me personally appeared \_\_\_\_\_, to me known to be the president of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he or she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my official seal this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
NOTARY PUBLIC,  
State of Washington  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_